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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 96-6
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

DOCKET FILE COPY ORIGINAL

U S WEST, INC. COMMENTS

U S WEST, Inc. ("U S WEST") hereby submits its comments in the above-referenced docket concerning the regulation of Commercial Mobile Radio Service (or "CMRS") licensee fixed service offerings.¹ In its previous comments in this docket, U S WEST urged the Federal Communications Commission ("Commission") to allow CMRS licensees to provide any service, including any fixed service, and, in keeping with regulatory parity goals, to regulate all CMRS providers alike, even if they offer fixed wireless services.²

¹ In the Matter of Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd. 8965 (1996) ("NPRM").

² See U S WEST Comments, filed herein Feb. 26, 1996 ("U S WEST Comments") and U S WEST Reply Comments, filed herein Mar. 25, 1996 ("U S WEST Reply").

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I. INTRODUCTION

The 1996 Act³ was signed into law in an effort to make the communications industry competitive.⁴ The 1996 Act also endorses deregulation as a way to achieve that goal.⁵

As competition intensifies in the wake of the 1996 Act, the distinction between fixed and mobile services will become blurred, especially in an environment where it will soon be possible for each consumer to have one phone and a single corresponding telephone number. The Commission has taken initial steps to support such a competitive environment, including allowing CMRS providers to offer fixed services. The Commission should continue on this course by regulating fixed and mobile services in the same manner, regardless of the extent to which the CMRS licensee provides either service. Any regulatory distinction placed on the two in this case will serve only as an artificial constraint that neither serves the public nor the telecommunications industry.

It is against this backdrop that U S WEST continues to support, and urges the Commission to adopt, a scheme under which fixed services offered by any CMRS provider are regulated in the exact same manner as CMRS-provided mobile services. The language and legislative intent of both the Omnibus Budget

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

⁴ See, e.g., Conference Report at 113; 142 Cong. Rec. S 1172 (daily ed. Feb. 9, 1996) (statement of Sen. Lott); 142 Cong. Rec. H 1145 (daily ed. Feb. 1, 1996) (statement of Rep. Linder).

⁵ Id.

Reconciliation Act of 1993⁶ and the 1996 Act support U S WEST's position.

Moreover, Title II regulation currently imposed on commercial mobile services is sufficient to protect consumers. In those anomalous cases where a state believes otherwise, it has the right to petition the Commission for authority to regulate CMRS rates.⁷

II. ANY SERVICE THE COMMISSION ALLOWS A CMRS LICENSEE TO PROVIDE CONSTITUTES A "MOBILE SERVICE"

The Commission seeks further comment on the regulatory treatment of fixed services (other than those considered ancillary, auxiliary or incidental to mobile service) provided by CMRS licensees.⁸ Section 332 clearly provides the Commission with authority to regulate solely fixed services provided by CMRS licensees in the same manner as it regulates exclusively mobile as well as incidental services provided by those same licensees.⁹ Congress not only recognized CMRS licensees would be providing fixed, as well as mobile services, but authorized regulation of such services under the CMRS regulatory scheme.

Congress made clear that all Personal Communications Services ("PCS") -- whether they are fixed or mobile in nature -- are to be defined as "mobile services"

⁶ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (Aug. 10, 1993) ("1993 Budget Act").

⁷ 47 USC § 332(c)(3).

⁸ NPRM, 11 FCC Rcd. at 8985 ¶ 47.

⁹ U S WEST specifically urges the Commission to subject fixed services offered by CMRS providers only to those Title II provisions to which all other CMRS mobile services are subject. See In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd. 1411, 1463-93 ¶¶ 124-219 (1994) ("2nd R&O").

and regulated under Section 332. The definitions section of the Communications Act of 1934, as amended, provides that “mobile service” means, among other things:

any service for which a license is required in a personal communications service established pursuant to the proceeding entitled “Amendment to the Commission’s Rules to Establish New Personal Communications Services” (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.¹⁰

In other words, any and all services which the Commission decides (in any of its rulemaking proceedings, including those not contemplated by Congress, such as the instant docket) PCS licensees may provide fall under the definition of mobile services.

Since the Commission decided that auxiliary, incidental, or ancillary fixed services could be provided under the PCS license, these services constitute mobile services.¹¹ Correspondingly, since the Commission has decided that PCS providers can offer exclusively fixed services under their PCS license, the definition of “mobile service” in the Communications Act requires that exclusively fixed services provided by PCS licensees also fall within that definition for regulatory purposes.

Further, consistent with the federal goal to promote regulatory parity among mobile service providers, the Commission should treat all other CMRS offerings in the same manner. As such, since PCS licensee provision of fixed service must be

¹⁰ 47 USC § 153(n) (emphasis added).

¹¹ See 2nd R&O, 9 FCC Rcd. at 1424 ¶ 36; NPRM, 11 FCC Rcd. at 8985 ¶ 48.

regulated as a mobile service, so too must all other CMRS licensee provisions of fixed service.¹²

The legislative history of the 1993 Budget Act further supports the conclusion that fixed services provided by CMRS licensees should be regulated as mobile services. The Senate initially proposed to exclude fixed services from the definition of mobile service: “[T]he term [mobile service] does not include rural radio service or the provision by a local exchange carrier of telephone exchange service by radio instead of by wire.”¹³ The House definition, which did not exclude fixed wireless service, was, of course, ultimately adopted. Thus, the Congress made a deliberate decision that fixed services would not be excluded from the definition of mobile service. With that in mind, the Commission clearly must find that fixed services provided by CMRS licensees constitute mobile services, and must be regulated as all other CMRS offerings.

We note that only those services utilizing CMRS-designated spectrum and provided by CMRS licensees constitute and can be regulated as mobile services. Thus, Basic Exchange Telephone Radio Systems (“BETRS”) services, for example, cannot be regulated as mobile services.¹⁴ That is, since BETRS is provided under a

¹² In response to the Commission’s question as to what the phrase “and includes” in 47 USC § 153(n) means, U S WEST submits that it means that the three examples following the phrase represent possible -- although not all inclusive, nor necessarily independent -- characteristics of mobile services. See NPRM, 11 FCC Rcd. at 8986 ¶ 49.

¹³ 1993 Budget Act Conference Report at 497.

¹⁴ See NPRM, 11 FCC Rcd. at 8987 ¶ 52.

separate authorization and not a CMRS license, it does not constitute a mobile service and therefore retains its separate, current regulation.¹⁵

II. THERE IS NO NEED TO ESTABLISH A REBUTTABLE PRESUMPTION TO DETERMINE HOW FIXED SERVICES SHOULD BE REGULATED

As discussed above, U S WEST supports a uniform approach to regulation of all services, including exclusively fixed, provided by CMRS licensees, and the Commission clearly has the authority under the 1993 Budget Act to impose such a scheme. Accordingly, U S WEST strongly objects to the Commission's proposal that a case-by-case determination must be made on the regulatory status of fixed services provided by CMRS licensees.¹⁶ Under this approach, the Commission would establish a rebuttable presumption that any wireless service provided under a CMRS license would be considered a commercial mobile service and regulated accordingly.¹⁷ The Commission seeks comment on what type of evidence a challenging party should produce in trying to rebut the presumption.¹⁸

To adopt such an ad hoc scheme would be an administrative nightmare for and a needless drain on the resources of both the Commission and the CMRS licensee. For example, ad hoc analysis would require the Commission to engage in repeated scrutiny of factors that are not easily quantified (i.e., customer perception,

¹⁵ See 47 CFR §§ 22.702, et al.

¹⁶ NPRM, 11 FCC Rcd. at 8988 ¶ 53.

¹⁷ Id.

¹⁸ Id.

the degree of fixed-mobile service integration),¹⁹ and CMRS providers would have to “defend” challenges to the rebuttable presumption.²⁰ Moreover, this scheme would leave CMRS providers uncertain about how to project business expenses and risks, for instance, if regulatory implications were not clearly defined. As a result of this uncertainty, CMRS providers may choose not to offer innovative fixed services.

Such a scheme is not necessary under the interpretation of the definition of mobile services discussed above. More importantly, to adopt an asymmetrical regulatory scheme is counterproductive toward the goal of deregulation of telecommunications services and would be in clear contravention of Congress’ intent that CMRS services be regulated in the same manner. The Commission should simply subject fixed services provided by CMRS licensees to the same regulatory regime as other services classified as CMRS.

The Commission’s overriding mandate under the Communications Act is the public interest. Regulation of fixed services offered by CMRS providers under the current mobile services scheme clearly serves the public interest and is consistent with the goals of the 1993 Budget Act,²¹ and the 1996 Act.²² The Commission should

¹⁹ See *id.* at 8988 ¶ 54.

²⁰ Such an approach also potentially might lead to frivolous filings by CMRS competitors.

²¹ Section 332 requires that the Commission in regulating CMRS spectrum consider whether its actions will “improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users. . . .” 47 USC § 332(a)(2)(emphasis added).

²² 1996 Act, 110 Stat. at 56: “To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

remain true to its belief that reduced, rather than increased, regulation will promote competitive and technologically innovative services.²³

In addition, there are significant and sufficient regulatory provisions in place to protect consumers. We note that CMRS providers offering fixed services would be required to offer just, reasonable and nondiscriminatory rates and services as Title II carriers subject to Sections 201 and 202 of the Communications Act.²⁴ To the extent that a state believes that the public is not sufficiently protected, it can petition the Commission for authority to regulate the rates of such fixed services.²⁵

The Commission has the authority to regulate fixed CMRS. It should do so in a manner that removes, rather than imposes additional, regulatory barriers and fosters, rather than discourages, competition. Only in those cases where a state has petitioned the Commission and demonstrated that market conditions deny the public protection from unreasonable rates should the Commission subject fixed CMRS applications to a different regulatory scheme from that of all other mobile services.

²³ See, e.g., NPRM, 11 FCC Rcd. at 8982 ¶ 40 (Commission notes its intent to foster the development of integrated, seamless mobile, fixed wireless, wireline, and cable service offerings through less regulation). Success in the marketplace should be driven by technological innovation, service quality, competition-based pricing decisions and responsiveness to consumer needs, not by strategies in the regulatory arena. 2nd R&O, 9 FCC Rcd. at 1420 ¶ 19.

²⁴ The public also has a forum through which it can register protests regarding such violations: the Section 208 complaint process.

²⁵ 47 USC § 332(c)(3).

III. ALL CMRS SHOULD BE REGULATED AS CMRS

Finally, the Commission asks for comment on “the extent to which services provided under separate licenses or by separate entities may be relevant to the regulatory status of a particular fixed service offering provided under a given license.”²⁶ Under the regulatory scheme supported by U S WEST, this particular issue is, for the most part, irrelevant. It is worth repeating, however, U S WEST’s earlier comments in this docket: CMRS providers should be regulated in the exact same manner.²⁷ That is, the type of license (CMRS) determines the regulatory treatment, not the nature or status of the holder of that license.

All CMRS licensees providing fixed services, including landline local exchange carriers (incumbent or new) providing fixed services under their CMRS license, should be regulated as CMRS providers. Disparate regulation of CMRS providers would frustrate the regulatory parity intent of the 1993 Budget Act. Such regulation would also impede increased consumer choice and competition objectives.

²⁶ NPRM, 11 FCC Rcd. at 8988 ¶ 54.

²⁷ U S WEST Comments at 6-8; U S WEST Reply at 5-8, 9.

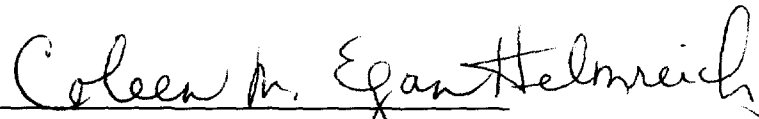
IV. CONCLUSION

U S WEST urges the Commission to adopt rules that ensure that all CMRS licensee services are regulated in the same manner.

Respectfully submitted,

U S WEST, INC.

By:

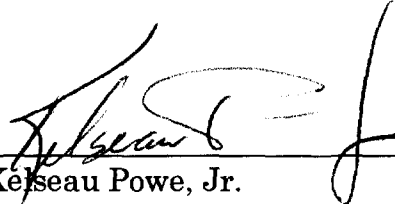

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November 25, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 25th day of November, 1996, I have caused a copy of the foregoing **U S WEST, INC. COMMENTS** to be served via hand delivery upon the persons listed on the attached service list.


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